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Attorneys for *Movant*
PennyMac Loan Services, LLC. as servicer for Bank of America, N.A.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH - SALT LAKE CITY

In re:

DAVID LEWIS KAGIE and ANNETTE
KAGIE,

Debtor.

3398 South 6180 West,
West Valley City, Utah 84128

SSN/ITIN: XXX-XX-0604
XXX-XX-5876

Bankruptcy Case No. 17-30043-KRA

Chapter 13

Hon. Honorable Kevin R. Anderson

[FILED ELECTRONICALLY]

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

PennyMac Loan Services, LLC. as servicer for Bank of America, N.A.¹ (“Movant”) moves this court for an order terminating the automatic stay of 11 U.S.C. § 362(a) as to the real

¹ This motion shall not constitute a waiver of the within party’s right to receive service pursuant to Fed. R. Civ. P. 4, made applicable to this proceeding by Fed. R. Bankr. P. 7004, notwithstanding Aldridge Pite, LLP’s participation in this proceeding. Moreover, the within party does not authorize Aldridge Pite, LLP, either expressly or impliedly through Aldridge Pite, LLP’s participation in this proceeding, to act as its agent for purposes of service under Fed. R. Bankr. P. 7004.

property located at 3398 South 6180 West, West Valley City, Utah 84128 (the “Property”). This motion is supported by the points and authorities cited herein and the record currently before the court.

I. FACTUAL AND PROCEDURAL SUMMARY

On or about January 26, 2009, David L. Kagie (“Debtor”) and Annette Kagie (collectively, the “Borrowers”) executed a promissory note in the principal sum of \$225,534.00 (the “Note”), which was made payable to New Line Mortgage, DIV. Republic Mortgage Home Loans, LLC. A copy of the Note is attached hereto as **Exhibit A** and incorporated herein by reference.

The Note is secured by a Deed of Trust (the “Deed of Trust”) encumbering the Property.² A copy of the Deed of Trust is attached hereto as **Exhibit B** and incorporated herein by reference.

Movant currently holds possession of the Note, which is indorsed in blank. *See* **Exhibit A**.

The Deed of Trust was assigned to BAC Home Loans Servicing, LP FKA Countrywide Home Loans Servicing LP. A copy of the Assignment of Deed of Trust is attached hereto as **Exhibit C** and incorporated herein by reference.

On or about July 1, 2011, BAC Home Loans Servicing, LP merged with and into Bank of America, N.A. A true and correct copy of the Certificate of Merger is attached hereto as **Exhibit D**.

On November 17, 2017, Debtor commenced this case by filing a voluntary petition under Chapter 13 of the Bankruptcy Code.

A default exists under the Loan for failure to make payments due and owing under the Note and Deed of Trust.

² The Note and Deed of Trust are collectively referred to herein as the “Loan.”

As of May 22, 2018, the post-petition arrearage owed under the Note and Deed of Trust is as follows:

PAYMENTS			
<u>Number of Payments</u>	<u>Payment Amount</u>	<u>Payment Dates</u>	<u>Total</u>
2	\$1,318.41	4/1/2018 to 5/1/2018	\$2,636.82
<i>Less Suspense:</i>			\$(94.36)
Total Post-Petition Payments as of May 22, 2018:			\$2,542.46

An additional payment will come due on June 1, 2018, and on the 1st day of each month thereafter until the Loan is paid in full.

Good through June 1, 2018, the total amount owed under the Note is approximately \$219,104.14.

II. LEGAL ARGUMENT

A. MOVANT IS ENTITLED TO RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

Section 362(d)(1) provides, in pertinent part:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay-

(1) *For cause*, including the lack of adequate protection of an interest in property of such party in interest....

11 U.S.C. § 362(d)(1) (emphasis added). Cause includes a debtor's lack of equity in a property, a debtor's failure to make post-petition mortgage payments, and inadequate protection of a creditor's interest in the property. *See In re Binder*, 224 B.R. 483, 491 (Bankr. D. Colo. 1998); *see also In re Ellis*, 60 B.R. 432 (9th Cir. BAP 1985).

Pursuant to Debtor's Chapter 13 Plan, Debtor is obligated to make all post-petition payments due and owing under the Note. Debtor's failure to tender the post-petition mortgage payments due and owing under the note, as detailed herein, constitutes "cause" to terminate the

automatic stay. Based upon the foregoing, Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

III. CONCLUSION

For all of the reasons discussed herein, Movant is entitled to relief from the automatic stay of 11 U.S.C. § 362(a).


WHEREFORE, Movant respectfully prays for an Order of this court:

1. Terminating the automatic stay of 11 U.S.C. § 362(a) to allow Movant (and any successors or assigns) to proceed under applicable non-bankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property;
2. Permitting Movant to offer and provide Debtor's with information re: a potential forbearance agreement, short sale, deed in lieu, loan modification, refinance agreement, or other loan workout/loss mitigation agreement, and to enter into such agreement with Debtor without further order of the court;
3. Granting Movant such other and further relief as the court deems just and proper.

Respectfully submitted,

ALDRIDGE PITE, LLP

Dated: May 31, 2018



TYLER WIRICK
Attorney for *Movant* PennyMac Loan
Services, LLC. as servicer for Bank of
America, N.A.

CERTIFICATE OF MAILING

I hereby certify that on May 31, 2018, I mailed a copy of the foregoing Motion and all exhibits to the following:

DEBTORS

David Lewis Kagie
Annette Kagie
3398 South 6180 West
West Valley City, UT 84128

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Dated: May 31, 2018

JHOSIE R. CHEEKS_____